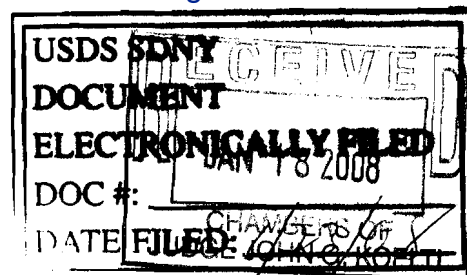


STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL



CRIMINAL DIVISION
Federal Habeas Corpus Section

January 18, 2008

Via Facsimile: 212-805-7912

Honorable John G. Koeltl
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Room 1030
New York, New York 10007

APPLICATION GRANTED
SO ORDERED

[Signature]
John G. Koeltl, U.S.D.J.
4/18/08

Re: White v. Marshall
07 Civ. 9350 (JGK)

Your Honor:

I represent the respondent in the above-referenced habeas corpus proceeding. I write to explain why no response has been filed to this petition, and to respectfully request a 45-day extension of time, from today, in which to do so, to March 3, 2008.

Your Honor ordered the District Attorney to respond to this petition on or before January 7, 2008. The New York Attorney General and the New York County District Attorney's Office have an arrangement whereby the Attorney General responds to all habeas petitions filed with respect to New York County convictions except for convictions rendered in murder cases. When a case requiring a response from the Attorney General is served on the District Attorney, the District Attorney usually promptly forwards the petition to this office, along with the state court record. As this case does not involve a murder conviction, under the arrangement, this office would – and will – respond to this petition.

Here, however, the petition was not sent to this office until January 15th, a week after the response was due. See this Court's Order dated November 1, 2007, enclosed herewith; see fax banner. I do not know why the petition was not earlier forwarded to this office, but Assistant District Attorney Nicole Beder informed us that she would send a letter to Your Honor to explain why there was a delay. On January 16th, my office ordered the transcript of the state court proceedings from the New York Supreme Court Library. Yesterday afternoon, I was assigned to respond to the petition.

I respectfully ask that this Court permit me to file the response on or before March 3rd for a number of reasons. It can take weeks to obtain transcripts from the Supreme Court library, and while the sentencing transcript may be most pertinent to this petition – the petition pleads a single claim, an Apprendi point – the complete record will undoubtedly be useful to the Court as well as counsel, and we have been ordered to provide it, in any event.

Also, my workload includes a number of filings that already have extended due dates, and require my immediate attention. My office has asked me to file an appellant's brief in the Second Circuit in Larweth v. Conway, 493 F. Supp. 2d (W.D.N.Y. 2007), as soon as possible, I will owe a respondent's brief in Dolphy v. Mantello, Docket No. 05-1206 on February 21st, and I have an argument in the Second Circuit on February 29th (O'Connor v. Kuhlman, Docket No. 05-5011-pr). And I owe habeas responses in Thompson v. Ercole, 07-CV-1229 (N.D.N.Y.), on February 1st, Taylor v. Ercole 07 Civ. 9266 (S.D.N.Y.), on January 28th, St. Louis v. Brown, 07-CV-1082 (N.D.N.Y.) on March 3rd and Martinez v. O'Connell, 06-CV-887 (N.D.N.Y.) on March 10th; the latter three matters are on extended deadlines.


Finally, because the Second Circuit will likely not offer guidance on Apprendi issues for at least a few more months, I respectfully submit that a delay may not prejudice petitioner.

Petitioner is represented by Edward Hamlin, Esq. Mr. Hamlin and I spoke yesterday afternoon, and he informed me that he objects to my extension request.

I apologize to the Court and to Mr. Hamlin for the apparent misunderstanding or inadvertence that lead to the need for this extension request.

Thank you very much for your consideration.

Respectfully submitted,



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